IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO. 347 OF 2006
Sk. Siddiqui s/o Sk.Chhotu & another..vs.. Shri Karnu S. Gonde.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. Vasanti A. Naik, J.

DATED : 12/09/2007

Heard Shri Harsulkar, learned counsel for appellants and Shri Khajanchi, learned counsel for respondent sole.

The appellants are the LR's of original defendant. A suit was filed by the plaintiff for grant of permanent injunction restraining the defendant from interfering with the peaceful possession of the plaintiff over the suit property. According to the plaintiff, he had purchased suit plot on 12/5/1983 and he had acquired the possession thereof on the same day. Thereafter, a small hut was constructed by him on the suit plot and the defendants obstructed the plaintiff from using the same on 17/11/1987. In view of aforesaid incident, the suit was filed

by the plaintiff for grant of permanent injunction.

The defendants denied the claim of the plaintiff and also denied the ownership and possession of the plaintiff over the suit plot. It was pleaded by the defendants that defendant No.2 Mumtaz Begum was the owner and the possessor of the suit plot No.5 since one and half years and they also pleaded that the Vendor of the plaintiff had no right to execute sale deed in respect of the suit plot in favour of the plaintiff.

On the aforesaid pleadings of the parties, the trial Court framed the issues and after considering the evidence tendered by the parties on record held that the plaintiff had failed to prove that he was the owner of the suit property. It was held that the plaintiff further failed to prove that he was in possession of the suit property. The trial Court held that the defendants had proved that he was the owner and possessor of house No.5. The trial Court, therefore, dismissed the suit filed by the plaintiff by holding that the defendants proved that the Vendor of the plaintiff had no saleable title for conveying the suit site in favour of the plaintiff.

In appeal, filed by the plaintiff before the Additional District Judge, Chandrapur, the first Appellate Court by judgment dated 9/1/2006, reversed the judgment passed by the

trial Court and decreed the appeal filed by the plaintiff with costs. The first Appellate Court held that the plaintiff had no right over the suit property and the trial Court unnecessarily decided the question of title to the suit property. The first Appellate Court then considered volumnuous of documentary evidence on record which showed that the plaintiff was in possession of the property on the date of institution of the suit and he was regularly paying tax of the suit property. The first Appellate Court then held that the tax receipts produced by the defendants clearly disclosed that they pertained to the period subsequent to the filing of the suit by the plaintiff. The first Appellate Court on appreciation of the evidence on record held that suit land was the government land and none of the parties could have claimed the ownership over the suit property. The first Appellate Court then came to a conclusion that the plaintiff was in occupation of the suit property on the date of institution of the suit. The first Appellate Court rightly granted permanent injunction in favour of the plaintiff and against the defendant, who did not have any better title than the plaintiff himself.

The first Appellate Court recorded the finding that the plaintiff was in possession of the suit property at the relevant time. On appreciation of material evidence on record, the

first Appellate Court rightly held that the declaration of the ownership was not sought by the plaintiff, therefore, the Trial Court could not have dealt with that issue. The submissions made on behalf of the appellants that Mumtaz Begum, defendant No.2, had been died during the pendency of the first appeal, and therefore, the first Appellate Court was not justified in granting injunction against the defendants, is not acceptable. The objection raised on behalf of the appellant that the plaintiff had not examined the Vendor of the plaintiff to prove the sale deed and hence, the title of the plaintiff was not proved is also of no consequence whatsoever for decide the issues involved in this Second Appeal as the first Appellate Court rightly held that it was not necessary to decide the question of title since the plaintiff had not sought a declaration in that regard. It was pointed out to this Court on 6/8/2007 that the first Appellate Court did not consider the evidence of some of the witnesses while reversing the evidence recorded by the Trial Court. Hence, notice was issued to the respondent. However, on perusal of the oral evidence tendered by the plaintiff and defendants, it is clear that the witnesses have been examined by the parties to prove the title of the plaintiff and the defendants and hence, the first Appellate Court in-stead of

relying on the bare word of the plaintiff and defendant alone, considered other documentary evidence to hold that the plaintiff was in possession of the suit property. The findings recorded by the first Appellate Court are pure findings of fact which do not give rise to any substantial questions of law.

The second appeal is, therefore, dismissed with no order as to costs.

JUDGE.

jsa.